UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TARSEM AGARWAL,	§	
	§	
PLAINTIFF	§	
	§	
v.	§	**CIVIL ACTION NO. 4:16-cv-03285**
	§	
MT. HAWLEY INSURANCE	§	
COMPANY and KEVIN WILSON	§	
MAYFIELD	§	
	§	
DEFENDANTS.	§	

DEFENDANT'S NOTICE OF REMOVAL

Defendant Mt. Hawley Insurance Company files this Notice of Removal of this action from the District Court in the 434th Judicial District, Fort Bend County, Texas to the United States District Court for the Southern District of Texas, Houston Division, the district and division in which the 434th Judicial District Court is located. This Notice of Removal is filed pursuant to 28 U.S.C. §§ 1441 and 1446. In support hereof, Defendants show this Court as follows:

1. Plaintiff Tarsem Agarwal ("Plaintiff") commenced an action against Defendant and others in the District Court for the 434th Judicial District, Fort Bend County, Texas, entitled *Tarsem Agarwal v. Mt. Hawley Insurance Company and Kevin Wilson Mayfield*, pending as Cause No. 16-DCV-236818.

2. Removal is timely because thirty (30) days have not elapsed since Defendant Mt. Hawley Insurance Company was served with Plaintiff's Original Petition ("Petition"), as required by 28 U.S.C. § 1446(b). Defendant Mayfield has not been served with Plaintiff's Petition.

3. A copy of this Notice of Removal will be filed with the State of Texas District Court, in Fort Bend County, and a copy of this Notice of Removal will also be served on the Plaintiff. Defendant is, contemporaneously with the filing of this Notice, giving written notice of filing of this Notice of Removal with the clerk of the 434th Judicial District Court of Fort Bend County, Texas.

4. In accordance with Local Rule 81, copies of all processes, pleadings, orders signed by the state judge, a copy of the state docket sheet, a complete list of all counsel of record, together with an index of such documents are attached hereto as **Exhibits A - E**.

5. Plaintiff has requested trial by jury in the State Court case.

6. Defendant has filed contemporaneously with this Notice a civil cover sheet.

Ground for Removal: Diversity

7. This Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1332, in that this is a civil action where the matter in controversy exceeds $75,000, and is between citizens of different States.

A. The amount in controversy exceeds the federal minimum jurisdictional requirements.

8. Plaintiff has pled that he is seeking monetary relief over $1 million. *See* **Exhibit B** at ¶ 79. Thus, the amount in dispute exceeds $75,000, exclusive of interest and costs.

B. There is complete diversity between Plaintiff and all Defendants who have been properly joined and served.

9. Under the diversity statute, corporations "shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business...." 28 U.S.C. § 1332(c)(1).

10. Plaintiff was at the time of the filing of this action, has been at all times since, and still is an individual citizen of Texas for purposes of determining diversity jurisdiction.

11. Defendant Mt. Hawley Insurance Company is a corporation organized under the laws of Illinois, with its principal place of business in Illinois. Accordingly, Mt. Hawley Insurance Company is a citizen of Illinois.

12. Defendant Kevin Wilson Mayfield has not been served with Plaintiff's Original Petition. As such, his citizenship is disregarded for purposes of determining the Court's diversity jurisdiction. *See Breitweiser v. Chesapeake Energy Corp.*, 2015 WL 6322625, *4-5 (N.D. Tex. Oct. 20, 2015) (holding that non-forum-state defendant may remove on the basis of diversity citizenship where forum-state defendant has not been "properly joined **and served**" at the time the notice of removal is filed) (emphasis added). As a practical matter, Plaintiff has not, and cannot, allege any culpable conduct on the part of Defendant Mayfield, who has been fraudulent joined by Plaintiff in the state-court suit solely to defeat this Court's diversity jurisdiction.

13. Complete diversity exists in this case and removal is proper because Plaintiff is a citizen of Texas, and Mt. Hawley Insurance Company is a citizen of Illinois.

WHEREFORE, Defendant Mt. Hawley Insurance Company prays that the above-described action now pending in the 434th District Court in Fort Bend County, Texas, be removed to this Court.

Respectfully submitted,

/s/ Greg K. Winslett
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ATTORNEYS FOR MT. HAWLEY INSURANCE COMPANY

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument is being served upon counsel for Plaintiff, via certified mail, return receipt requested, in accordance with the Federal Rules of Civil Procedure, on this 7th day of November, 2016 as follows:

Chad T. Wilson
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/s/ Greg K. Winslett
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4828-2848-7996, v. 1